

ASSEMBLY BILL

No. 2137

Introduced by Assembly Member Bradford

February 23, 2012

An act to amend Sections 1597.30, 1597.40, 1597.43, and 1597.46 of the Health and Safety Code, relating to family day care homes.

LEGISLATIVE COUNSEL'S DIGEST

AB 2137, as introduced, Bradford. Family day care homes.

The California Child Day Care Facilities Act provides for the licensing and regulation of child day care facilities, including family day care homes, by the State Department of Social Services. The act prohibits a city, county, or city and county from prohibiting large family day care homes on lots zoned for single-family dwellings, but requires a city, county, or city and county to (1) classify large family day care homes as a permitted use of residential property for zoning purposes, (2) grant a nondiscretionary permit to use a lot zoned for a single-family dwelling to any large family day care home that complies with certain local ordinances, or (3) require any large family day care home to apply for a permit to use a lot zoned for single-family dwellings.

This bill would instead authorize a city, county, or city and county to prohibit large family day care homes on lots zoned for single-family dwellings. The bill would encourage, rather than require, the 3 actions specified above. This bill also would make technical and conforming changes to these provisions, and would make associated changes with respect to legislative findings and declarations and the Legislature's intent in enacting these provisions.

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

SECTION 1. Section 1597.30 of the Health and Safety Code is amended to read:

1597.30. The Legislature finds and declares:

(a) It has a responsibility to ensure the health and safety of children in family homes that provide day care.

(b) That there are insufficient numbers of regulated family day care homes in California.

(c) There will be a growing need for child day care facilities due to the increase in working parents.

(d) Many parents prefer child day care located in their neighborhoods in family homes. *However, it is in the state's interest that this preference be balanced against the potential negative impact to the surrounding single-family neighborhood in terms of spacing and concentration, traffic control, parking, and noise control.*

(e) There should be a variety of child care settings, including regulated family day care homes, as suitable alternatives for parents.

(f) That the program to be operated by the state should be cost effective, streamlined, and simple to administer in order to ensure adequate care for children placed in family day care homes, while not placing undue burdens on the providers.

(g) That the state should maintain an efficient program of regulating family day care homes that ensures the provision of adequate protection, supervision, and guidance to children in their homes.

SEC. 2. Section 1597.40 of the Health and Safety Code is amended to read:

1597.40. (a) It is the intent of the Legislature that *small* family day care homes for children should be situated in normal residential surroundings so as to give children the home environment which is conducive to healthy and safe development. It is the public policy of this state to provide children in a *small* family day care home the same home environment as provided in a traditional home setting.

The Legislature declares this policy to be of statewide concern with the purpose of occupying the field to the exclusion of municipal zoning, building and fire codes and regulations

governing the use or occupancy of *small* family day care homes for children, except as specifically provided for in this chapter, and to prohibit any restrictions relating to the use of single-family residences for *small* family day care homes for children except as provided by this chapter.

(b) Every provision in a written instrument entered into relating to real property—~~which~~ *that* purports to forbid or restrict the conveyance, encumbrance, leasing, or mortgaging of the real property for use or occupancy as a family day care home for children, is void and every restriction or prohibition in any such written instrument as to the use or occupancy of the property as a family day care home for children is void.

(c) Except as provided in subdivision (d), every restriction or prohibition entered into, whether by way of covenant, condition upon use or occupancy, or upon transfer of title to real property, which restricts or prohibits directly, or indirectly limits, the acquisition, use, or occupancy of such property for a family day care home for children is void.

(d) (1) A prospective family day care home provider, who resides in a rental property, shall provide 30 days' written notice to the landlord or owner of the rental property prior to the commencement of operation of the family day care home.

(2) For family day care home providers who have relocated an existing licensed family day care home program to a rental property on or after January 1, 1997, less than 30 days' written notice may be provided in cases where the department approves the operation of the new location of the family day care home in ~~less~~ *fewer* than 30 days, or the home is licensed in ~~less~~ *fewer* than 30 days, in order that service to the children served in the former location not be interrupted.

(3) A family day care home provider in operation on rental or leased property as of January 1, 1997, shall notify the landlord or property owner in writing at the time of the annual license fee renewal, or by March 31, 1997, whichever occurs later.

(4) Notwithstanding any other provision of law, upon commencement of, or knowledge of, the operation of a family day care home on his or her property, the landlord or property owner may require the family day care home provider to pay an increased security deposit for operation of the family day care home. The increase in deposit may be required notwithstanding that a lesser

1 amount is required of tenants who do not operate family day care
2 homes. In no event, however, shall the total security deposit
3 charged exceed the maximum allowable under existing law.

4 (5) Section 1596.890 shall not apply to this subdivision.

5 SEC. 3. Section 1597.43 of the Health and Safety Code is
6 amended to read:

7 1597.43. The Legislature finds and declares all of the following:

8 (a) ~~Family~~ *Small family* day care homes operated under the
9 standards of state law constitute accessory uses of residentially
10 zoned and occupied properties and do not fundamentally alter the
11 nature of the underlying residential uses. ~~Family~~ *Small family* day
12 care homes draw clients and vehicles to their sites during a limited
13 time of day and do not require the attendance of a large number
14 of employees and equipment.

15 (b) The uses of congregate care facilities *and large family day*
16 *care homes* are distinguishable from the uses of *small family day*
17 *care homes* operated under the standards of state law. ~~For~~

18 (1) *For* purposes of this section, a “congregate care facility”
19 means a “residential facility,” as defined in paragraph (1) of
20 subdivision (a) of Section 1502. Congregate care facilities are used
21 throughout the day and night, and the institutional uses of these
22 facilities are primary uses of the facilities, not accessory uses, and
23 draw a large number of employees, vehicles, and equipment
24 compared to that drawn to *small family day care homes*.

25 (2) *Large family day care homes draw a larger number of*
26 *employees, vehicles, and noise than do small family day care homes*
27 *and shall not be considered an accessory use.*

28 (c) The expansion permitted for family day care homes by
29 Sections 1597.44 and 1597.465 is not appropriate with respect to
30 congregate care facilities, or any other facilities with
31 quasi-institutional uses. Therefore, with these provisions, the
32 Legislature does not intend to alter the legal standards governing
33 congregate care facilities and these provisions are not intended to
34 encourage, or be a precedent for, changes in statutory and case
35 law governing congregate care facilities.

36 SEC. 4. Section 1597.46 of the Health and Safety Code is
37 amended to read:

38 1597.46. ~~All of the following shall apply~~ *With regard to large*
39 *family day care homes:*

1 (a) A city, county, or city and county ~~shall not~~ *may* prohibit
2 large family day care homes on lots zoned for single-family
3 dwellings, ~~but shall do one of the following:~~ *dwellings.*

4 (b) *A city, county, or city and county is encouraged, but not*
5 *required, to do one of the following as it relates to large family*
6 *day care homes:*

7 (1) Classify these homes as a permitted use of residential
8 property for zoning purposes.

9 (2) Grant a nondiscretionary permit to use a lot zoned for a
10 single-family dwelling to any large family day care home that
11 complies with local ordinances prescribing reasonable standards,
12 restrictions, and requirements concerning spacing and
13 concentration, traffic control, parking, and noise control relating
14 to those homes, and complies with subdivision ~~(e)~~ *(f)* and any
15 regulations adopted by the State Fire Marshal pursuant to that
16 subdivision. Any noise standards shall be consistent with local
17 noise ordinances implementing the noise element of the general
18 plan and shall take into consideration the noise level generated by
19 children. ~~The~~ *Any* permit issued pursuant to this paragraph shall
20 be granted by the zoning administrator, or if there is no zoning
21 administrator by the person or persons designated by the planning
22 agency to grant these permits, upon the certification without a
23 hearing.

24 (3) (A) Require any large family day care home to apply for a
25 permit to use a lot zoned for single-family dwellings. The zoning
26 administrator, or if there is no zoning administrator, the person or
27 persons designated by the planning agency to handle the use
28 permits, shall review and decide the applications. The use permit
29 shall be granted if the large family day care home complies with
30 local ordinances, if any, prescribing reasonable standards,
31 restrictions, and requirements concerning the following factors:
32 spacing and concentration, traffic control, parking, and noise
33 control relating to those homes, and complies with subdivision ~~(e)~~
34 *(f)* and any regulations adopted by the State Fire Marshal pursuant
35 to that subdivision. Any noise standards shall be consistent with
36 local noise ordinances implementing the noise element of the
37 general plan and shall take into consideration the noise levels
38 generated by children. The local government shall process any
39 required permit as economically as possible.

40 Fees

1 (B) If a city, county, or city and county elects to implement this
2 paragraph, fees charged for review shall not exceed the costs of
3 the review and permit process. An applicant may request a
4 verification of fees, and the city, county, or city and county shall
5 provide the applicant with a written breakdown within 45 days of
6 the request. Beginning July 1, 2007, the application form for large
7 family day care home permits shall include a statement of the
8 applicant's right to request the written fee verification.

9 ~~Not less~~

10 (C) If a city, county, or city and county elects to implement this
11 paragraph, not fewer than 10 days prior to the date on which the
12 decision will be made on the application, the zoning administrator
13 or person designated to handle the use permits shall give notice of
14 the proposed use by mail or delivery to all owners shown on the
15 last equalized assessment roll as owning real property within a
16 100-foot radius of the exterior boundaries of the proposed large
17 family day care home. A hearing on the application for a permit
18 issued pursuant to this paragraph shall not be held before a decision
19 is made unless a hearing is requested by the applicant or other
20 affected person. The applicant or other affected person may appeal
21 the decision. The appellant shall pay the cost, if any, of the appeal.

22 ~~(b)~~

23 (c) In connection with any action taken pursuant to paragraph
24 (2) or (3) of subdivision~~(a)~~ (b), a city, county, or city and county
25 shall do all of the following:

26 (1) Upon the request of an applicant, provide a list of the permits
27 and fees that are required by the city, county, or city and county,
28 including information about other permits that may be required
29 by other departments in the city, county, or city and county, or by
30 other public agencies. The city, county, or city and county shall,
31 upon request of any applicant, also provide information about the
32 anticipated length of time for reviewing and processing the permit
33 application.

34 (2) Upon the request of an applicant, provide information on
35 the breakdown of any individual fees charged in connection with
36 the issuance of the permit.

37 (3) If a deposit is required to cover the cost of the permit,
38 provide information to the applicant about the estimated final cost
39 to the applicant of the permit, and procedures for receiving a refund
40 from the portion of the deposit not used.

1 ~~(e)~~

2 ~~(d)~~ A large family day care home shall not be subject to the
3 provisions of Division 13 (commencing with Section 21000) of
4 the Public Resources Code.

5 ~~(d)~~

6 ~~(e)~~ Use of a single-family dwelling for the purposes of a large
7 family day care home shall not constitute a change of occupancy
8 for purposes of Part 1.5 (commencing with Section 17910) of
9 Division 13 (State Housing Law), or for purposes of local building
10 and fire codes.

11 ~~(e)~~

12 ~~(f)~~ ~~(1)~~ Large family day care homes shall be considered as
13 single-family residences for the purposes of the State Uniform
14 Building Standards Code and local building and fire codes, except
15 with respect to any additional standards specifically designed to
16 promote the fire and life safety of the children in these homes
17 adopted by the State Fire Marshal pursuant to this subdivision.
18 The State Fire Marshal shall adopt separate building standards
19 specifically relating to the subject of fire and life safety in large
20 family day care homes which shall be published in Title 24 of the
21 California Code of Regulations. These standards shall apply
22 uniformly throughout the state and shall include, but not be limited
23 to: ~~(1) the~~ *all of the following*:

24 ~~(A)~~ *The* requirement that a large family day care home contain
25 a fire extinguisher or smoke detector device, or both, which meets
26 standards established by the State Fire Marshal; ~~(2) specification.~~

27 ~~(B)~~ *Specification* as to the number of required exits from the
28 home; ~~and (3) specification.~~

29 ~~(C)~~ *Specification* as to the floor or floors on which day care may
30 be provided. ~~Enforcement~~

31 ~~(2)~~ *Enforcement of these the provisions described in paragraph*
32 *(1)* shall be in accordance with Sections 13145 and 13146. ~~No A~~
33 city, county, city and county, or district shall *not* adopt or enforce
34 any building ordinance or local rule or regulation relating to the
35 subject of fire and life safety in large family day care homes ~~which~~
36 *that* is inconsistent with those standards adopted by the State Fire
37 Marshal, except to the extent the building ordinance or local rule
38 or regulation applies to single-family residences in which day care
39 is not provided.

40 ~~(f)~~

- 1 (*g*) The State Fire Marshal shall adopt the building standards
- 2 required in subdivision ~~(d)~~ (*e*) and any other regulations necessary
- 3 to implement this section.

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